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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ST. LOUIS COUNTY, MISSOURI,
Petitioner,

vs.

CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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31

QUESTIONS PRESENTED

1. Should a right of indemnification be available to Defendants found in violation of Title VII?

2. May a District Court, through its equitable powers to fashion relief, impose vicarious liability on a party which is not subject to liability for violation of Title VII and which has no agency or employment relationship with the person found liable for violation of Title VII.[1]

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[1] Other parties to the original action are Plaintiff Mary Susan Goodwin and Defendant William M. Corrigan. The Petition for Writ of Certiorari No. 83-1978 filed by Defendant Corrigan was denied.

TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	1
Statement of the Case	2
Reasons for Granting the Writ	4
Argument	4
Conclusion	7
Appendix:	
A. *Goodwin v. William Corrigan, et al.*, 555 F.Supp. 658 (E.D.Mo. 1982)	A-1
B. *Goodwin v. William Corrigan, et al.*, 741 F.2d. 1087 (8th Cir. 1984)	A-12
C. Order of Eighth Circuit Court of Appeals denying motion for rehearing	A-18
D. Statutes:	
Section 50.640 R.S.Mo. 1978	A-19
Section 50.641 R.S.Mo. 1978	A-20
Section 476.270 R.S.Mo. 1978	A-20

TABLE OF AUTHORITIES

Anderson v. Local 3, I.B.E.W., 582 F.Supp. 627 (D.N.Y. 1984)	5
Familias Unidos v. Briscoe, 619 F.2d 391 (5th Cir. 1980)	6

General Building Contractors Association, Inc. v. Pennsylvania, 458 U.S. 375 (1982) 5, 6

Northwest Airlines v. Transport Workers Union, 451 U.S. 77 (1981) 7

Oaks v. City of Fair Hope, Alabama, 515 F.Supp. 1004 (S.D.Ala. 1981) 6

Pool v. Northern, 504 F.Supp. 644 (E.D.Mo. 1980) 6

Stamford Board of Education v. Stamford Education Association, 697 F.2d 70 (2nd Cir. 1982) 4

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CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner St. Louis County, Missouri, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 23, 1984.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 741 F.2d 1087. The opinion of the District Court relevant to the issues presented by this Petition for Certiorari appears at 555 F.Supp. 658.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered August 23, 1984. A motion for rehearing filed by

St. Louis County, Missouri, Petitioner herein, was denied on September 21, 1984. This petition was filed within ninety days of that date. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

Plaintiff, Mary Goodwin, filed a two-count complaint in the United States District Court, Eastern District of Missouri, Eastern Division, Judge Clyde S. Cahill presiding. Count I alleged that the Circuit Court of the Twenty-First Judicial Circuit ("Circuit Court") and William M. Corrigan, judge of the Juvenile Division of the Circuit Court, and/or St. Louis County, Missouri, ("County") violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq* and Count II alleged that Judge Corrigan, the Circuit Court and/or the County violated 42 U.S.C. Section 1983 by transferring Goodwin from her position as a hearing officer for the Juvenile Division because of her sex. The District Court found that Goodwin was employed by the Circuit Court, Respondent herein, which, under Missouri law, has exclusive management, control and supervision of the Court and, therefore, dismissed Goodwin's claim against the County, Petitioner herein. This dismissal was not appealed. The Circuit Court was dismissed from Count II which was based on 42 U.S.C. Section 1983 on grounds that it is a state agency and, therefore, is immune from liability under 42 U.S.C. Section 1983 due to the Eleventh Amendment. This dismissal was not appealed.

The Circuit Court filed a third-party petition against the County claiming that the County would be liable for payment of any judgment rendered against the Circuit Court since the County is required by state statute to appropriate funds for the operation of the Circuit Court. The County may challenge proposed budget expenditures only on the ground that the amount proposed is illegal or arbitrary and unreasonable. Although the operations of the Circuit Court are funded primarily by ap-

propriations from St. Louis County, the salaries of the judges are paid by the State of Missouri. Also, the State sets the amount of court fees and receives eighty percent (80%) of the court fees collected by the Circuit Court. Employment policies and practices are exclusively under the control of the Circuit Court.

Count I was tried to a jury which found that Judge Corrigan had transferred Goodwin because of her sex and violated 42 U.S.C. Section 1983. The jury awarded One Dollar ($1.00) nominal damages and One Thousand Dollars ($1,000) punitive damages. The District Court awarded Goodwin Seventeen Thousand Nine Hundred Seventy-Two and 29/100 Dollars ($17,972.29) in attorneys fees and costs. The Eighth Circuit affirmed the lower court's decision. That decision was the subject of petition for writ of certiorari No. 83-1978 which was denied. Count II was tried to the District Court which found that the Circuit Court through the actions of Judge Corrigan had violated 42 U.S.C. Section 2000e *et seq.* and held the Circuit Court jointly liable for the attorneys' fees and costs. This decision was affirmed by the Eighth Circuit but has not been appealed to this Court.

Finally, the District Court held that "the County is inextricably involved in this litigation because it is the funding source of the Circuit Court and that without entering judgment against the County the Court's broad powers to fashion a remedy to further the objectives of Title VII, 42 U.S.C. Section 2000e-5(g) would be a nullity". The Eighth Circuit affirmed this decision without citation to any precedent.

REASONS FOR GRANTING THE WRIT

This case presents important questions concerning the remedial powers of the federal courts to fashion relief for violation of Title VII. The decision of the Eighth Circuit creates a right of indemnification for the wrongdoers which insulates them from liability for their unlawful conduct while imposing vicarious liability on a party which has not violated the law and which has no agency or employment relationship with the wrongdoers. This decision conflicts with the decision of the Second Circuit in *Stamford Board of Education v. Stamford Education Association,* 697 F.2d 70 (2nd Cir. 1982), which denied indemnification and further confuses the law with regard to liability for providing funds to a party which has engaged in discriminatory acts.

ARGUMENT

The liability of the Circuit Court is entirely a creature of 42 U.S.C. Section 2000e *et seq* whose purpose is to correct and deter discrimination by employers. Achievement of this purpose is undermined where, as in this case, the Court allows a defendant who has violated the law to receive indemnification from a third party. Through indemnification the wrongdoer insulates itself from liability for its unlawful conduct. This takes away the economic incentive to be concerned with the personnel practices and policies for if they are later found to be discriminatory, the wrongdoer will be fully compensated for any damages awarded as a result of the discriminatory conduct. Additionally, when, as in this case, the indemnitor is merely a funding source with no right of control or management, it cannot take any action itself to correct or deter discrimination.

The Eighth Circuit, through its novel and erroneous interpretation of state law, transferred liability to the County thus indemnifying the Circuit Court. The Second Circuit in *Stamford Board of Education v. Stamford Education Association,*

697 F.2d 70 (2nd Cir. 1982) voided a "hold harmless" agreement between the board and teachers union recognizing that indemnification would contravene a strong federal public policy against discrimination by reason of sex. Surely if one cannot contract away liability for violation of Title VII, one should not be able to shift liability by a statutory requirement of funding. Clearly the right of indemnification seriously undermines the public policy embodied in Title VII. It follows, therefore, that the availability of indemnification should be governed by federal law. *Anderson v. Local 3 I.B.E.W.*, 582 F.Supp. 627 (D.N.Y. 1984).

The Circuit Court is a State agency vested with the judicial powers of the State and, therefore, is granted immunity under 42 U.S.C. Section 1983. This immunity would not have existed had the Circuit Court been found to be a County agency. The relationship of St. Louis County and the Circuit Court is not one which would give rise to liability under the traditional doctrine of respondeat superior. That doctrine imposes liability on the principal for the tortious acts of his agent and on a master for the wrongful acts of his servant. *Restatement (2d) of Agency*, Section 1 (1958). The fact that the County funds the day-to-day operations of the Circuit Court does not render the Circuit Court the servant or agent of the County any more than an independent contractor is rendered an agent simply because he is compensated by the principal for his services. The County has no control over the Circuit Court's personnel policies and practices. The County neither knew or should have known of the discriminatory acts of the defendant. Had the County known of the unlawful conduct, it would have been powerless to take action.

Federal courts have broad power to fashion relief for violation of Title VII, but these powers are not without limitation. The remedial powers of the federal courts can be exercised only on the basis of a violation of the law and can extend no further than required by the nature and extent of that violation. *General Building Contractors Association v. Pennsylvania*, 458

U.S. 375 (1982). Yet despite the County's lack of liability for violation of the law either individually or under respondeat superior the Eighth Circuit nevertheless subjected the County to liability for the acts of a party found to have violated the substantive rights of the plaintiff. The Circuit Court, on the other hand, escapes liability.

Further, this decision confuses the law under civil rights statutes regarding liability of funding sources for the acts of a third party. For example, the County is not a joint employer under Title VII for jurisdictional purposes which would work to deprive plaintiff of any relief if the Circuit Court did not employ fifteen or more employees. See *Oaks v. City of Fair Hope, Alabama,* 515 F.Supp. 1004 (S.D.Ala. 1981). Yet if the Court acquires jurisdiction over the Title VII claim, the County is liable for all relief awarded. Further, in holding the County liable for relief awarded in the case at bar, the Eighth Circuit acted contrary to the general principal under other civil rights statutes that liability cannot be imposed on a party merely because it funds activities of the wrongdoer. In *Pool v. Northern,* 504 F.Supp. 644 (E.D.Mo. 1980) the District Court granted the motion to dismiss of defendant Phelps County, Missouri, in an action brought under 42 U.S.C. Section 1983 against Circuit Judge Northern, a public defender, and the Circuit Clerk, noting that the foregoing named defendants were state employees not county employees. Similarly, in *Familias Unidos v. Briscoe,* 619 F.2d 391 (5th Cir. 1980) the Court held that the County could not be held liable for any relief awarded, including attorney's fees, for the actions of the county judge since the judge was not accountable to the County and the complained of act was an effectuation of State not County policy. In *General Building Contractors Association v. Pennsylvania,* 458 U.S. 375 (1982) this Court held that the employers could not be held liable for a share of the relief awarded absent a supportable finding of liability for violation of 42 U.S.C. Section 1981 despite the fact that the employers funded the activities of the wrongdoer.

Title VII creates no express right of indemnification. There is no language in the statute to support an implied right of indemnification and the comprehensive character of the remedial scheme expressly fashioned by Congress strongly evidences an intent not to authorize additional remedies. *Northwest Airlines v. Transport Workers Union*, 451 U.S. 77 (1981). Therefore state law, even if it were correctly interpreted by the Eighth Circuit, should not govern remedies available to defendants found to have violated Title VII. Otherwise remedies as among defendants would vary according to happenstance of the state in which plaintiff brought the underlying action. Further the right of indemnification would allow the state to insulate itself and its agencies from liability for Title VII violations by shifting responsibility for funding.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Eighth Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A

Case No. 80-1340-C (5)

Mary Susan Goodwin,
Plaintiff,

v.

The Circuit Court of St.
Louis County, Missouri,
and
William M. Corrigan,
Defendants,

v.

St. Louis County, Mo.,
Third-Party
Defendant.

JUDGMENT AND ORDER

(Filed Dec. 30, 1982)

In accordance with the memorandum opinion filed this day and incorporated herein.

IT IS HEREBY ADJUDGED, DECLARED, and DECREED that Mary Susan Goodwin shall have judgment against the defendant Circuit Court of St. Louis County, Missouri, on Count I of her complaint.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that third-party plaintiff Circuit Court of St. Louis County, Missouri, shall have judgment against third-party defendant St. Louis County, Missouri, on the third-party complaint.

IT IS HEREBY ORDERED that defendants Circuit Court of St. Louis County, Missouri, and the Honorable William M.

Corrigan shall pay Mary Susan Goodwin's reasonable attorney's fees and costs of this litigation.

Dated this 30th day of December, 1982.

/s/ Clyde S. Cahill
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Case No. 80-1340-C (5)

Mary Susan Goodwin,
Plaintiff,

v.

The Circuit Court of St. Louis County, Missouri,
and
William M. Corrigan,
Defendants.

v.

St. Louis County, Mo.,
Third-Party
Defendant.

MEMORANDUM OPINION

(Filed Dec. 30, 1982)

This matter is before the Court for final disposition on the merits of Count I of Mary Susan Goodwin's complaint and for ruling on the merits of the third-party complaint filed by the defendant Circuit Court of St. Louis County (Circuit Court) against St. Louis County, Missouri (the County).

Goodwin initiated this action by filing a two-count complaint alleging that she was "demoted" from her position as a hearing officer for the Juvenile Division of the Circuit Court because she is a woman. Count I alleges that the Circuit Court violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and Count II alleges that defendant the Honorable William M. Corrigan individually contravened the Civil Rights Act of 1866, particularly 42 U.S.C. § 1983, by displacing Goodwin from her hearing officer position because of her sex.

Count II was tried to a jury that found for Goodwin and awarded her one dollar as nominal damages and $1,000 punitive damages. Goodwin's Title VII claim was tried to the Court simultaneously with the jury tried § 1983 cause of action. The parties also have presented stipulations of fact and legal memoranda on the Title VII claim for the Court's consideration. Goodwin seeks the following relief under Count I: 1) a finding that the Circuit Court engaged in unlawful employment practices, 2) an order requiring the Circuit Court to reinstate Goodwin to her position as hearing officer, and to compensate her for lost employment opportunities and benefits and for the disadvantages and adverse effects of her alleged demotion, 3) an order enjoining the Circuit Court from engaging in the alleged unlawful employment practices, and 4) reasonable attorney's fees and costs of litigation. The Circuit Court asserts in its third-party complaint that the County is liable for all relief that the Court awards Goodwin under Count I of the complaint. Based on the following findings of fact and conclusions of law, the Court finds for Goodwin on Count I of the complaint and for the Circuit Court on the third-party complaint.

FINDINGS OF FACT

A. Goodwin's Complaint.

1. Mary Susan Goodwin is a female citizen of the United States and a resident of the State of Missouri. At all relevant times herein she was employed by the Circuit Court and paid by

St. Louis County, Missouri. Since the adoption of the nonpartisan court selection system for the Circuit Court in August, 1970, the judges of the Circuit Court may retain such office only on approval of a majority of those voting on the proposition at periodic elections. However, the judges initially are appointed by the Governor of Missouri.

2. The Circuit Court is vested with part of the judicial power of the state by Article II, Section 1, and Article V, Sections 1 and 14, of the Missouri Constitution. The Juvenile Court is a division of the Circuit Court and is responsible for the care, protection, and discipline of children who come within its jurisdiction.

3. The Juvenile Code, MO. REV. STAT. Chapter 211, confers broad powers on the Juvenile Court to carry out the statutory purposes of facilitating the care, protection and discipline of children who come within the Court's jurisdiction. Both Chapter 211 and the Rules of Practice and Procedure in Juvenile Court, adopted December, 1975, call for hearings to be held during the various stages of the continuing supervision of the children within the jurisdiction of the Court.

4. Goodwin was hired to work in the Juvenile Court on November 1, 1971. She was selected and sworn in as a Hearing Officer by the then Juvenile Court Judge, Robert Hoester. Judge Hoester was appointed to that position by Missouri Governor Blair in 1958. At all times material herein, the primary function of a hearing officer was to hear cases and make proposed findings and recommendations regarding their disposition to the Juvenile Judge. Goodwin was a hearing officer from November 1, 1971 to March 15, 1979, and during that period she worked for Judges Hoester, Lasky, Edwards, and Corrigan.

5. At all times relevant in this case, the position of hearing officer was not subject to the civil service laws of St. Louis County or the State of Missouri.

6. The position of hearing officer is neither authorized by Missouri statutory law or case law. That position was instituted by the Circuit Court's judges under their inherent administrative powers to efficiently and effectively run the juvenile court system. An executive committee of Circuit Judges (the Committee) oversees the operations of the juvenile court. Traditionally, the presiding juvenile court judge is chairperson of the Committee.

7. At the time Judge Corrigan became the Juvenile Court Judge, January 1, 1979, there were five persons, including himself, who were hearing and adjudicating cases. These included Commissioner Walton LeMay and hearing officers Sam Oliver, Craig Donis, and Goodwin. On March 1, 1979, Robert Branom was appointed by the Circuit Court en banc to become a second commissioner. Juvenile Court Commissioners are authorized by state law.

8. Judge Corrigan declined the position of chairperson of the Committee. However, keeping with tradition, the judges left administration of the juvenile court system to the discretion of the presiding juvenile court judge, Judge Corrigan. Then presiding circuit judge, the Honorable James Ruddy, testified at trial that the circuit judges adhered to a "hands off" policy regarding administration of the juvenile court and left the operation of the juvenile court system to the presiding juvenile judge. But the presiding juvenile court judge usually reported monthly to the Circuit Court en banc and periodically, although less frequently than monthly, to the Committee. Those reports consisted of evaluations of past operations of the juvenile court and proposed actions to improve the juvenile system.

9. After Judge Corrigan became presiding judge of the juvenile court, he undertook to reorganize the juvenile court system by, *inter alia,* eliminating the three positions of hearing officer. Juvenile court officials testfied that Judge Corrigan stated that "things aren't going to run smoothly around here until we get rid of these goddamn women." Judge Corrigan in-

itially proposed to phase out the position of hearing officers by first eliminating two of the existing positions and eventually the third one. Although the record is not abundantly clear, several Circuit Court judges testified at trial that Judge Corrigan likely discussed the details of his plan to reorganize the juvenile court system, including Judge Corrigan's choice of person to retain in the remaining hearing officer position, with the Circuit Court en banc.

10. On March 15, 1979, Judge Corrigan transferred Goodwin from the position of hearing officer to a position of staff attorney in the legal department of the juvenile court. Judge Corrigan retained Craig Donis as the sole remaining hearing officer. Donis' employment at the juvenile court terminated in December, 1980. After Donis' termination, the two Commissioners and Judge Corrigan handled the entire caseload and Judge Corrigan handled the entire caseload of the Juvenile Court.

11. Goodwin's salary was not affected by her transfer to the position of staff attorney. The transfer also did not affect other economic benefits of her employment. She receives the same coverage under health insurance and pension plans and she has the same vacation benefits and sick leave. Her work schedule also was unaffected. She has suffered no economic loss as a result of her transfer. However, arguably, the position of hearing officer is more prestigious than that of staff attorney.

12. Goodwin filed a charge of sex discrimination with the Equal Employment Opportunity Commission on July 25, 1979. She filed this suit on October 16, 1981, within ninety (90) days of receipt of a "Notice of Right to Sue" issued by the Commission on August 19, 1980.

13. The Circuit Court met en banc to discuss Goodwin's lawsuit and the course of action to pursue. The Honorable Robert Hoester, who appointed Goodwin to the position of hearing officer, testified that at that meeting Judge Corrigan

stated that the Circuit Court would not have had that problem (the lawsuit) if Judge Hoester had not taken Goodwin "out of the kitchen and put her into a robe." All Circuit Court judges that worked directly with Goodwin and observed her performance testified that she was a diligent and competent worker.

14. Several Circuit Court judges at trial testified that no judge inquired specifically about the reasons for Goodwin's transfer or objected to such action. Moreover, no action was taken to investigate the matter after Goodwin formally charged Judge Corrigan and the Circuit Court with discriminatory employment practices.

B. Third-Party Complaint.

15. Third-Party defendant, St. Louis County, Missouri, is a body corporate and politic, a county of the first class of the State of Missouri, operating under a home rule Charter form of government, adopted on November 6, 1979, pursuant to the provisions of Article VI, Section 18, of the 1945 Constitution of Missouri, and having all the powers and duties prescribed by the Constitution and laws of the State of Missouri and the charter and ordinances of St. Louis County, Missouri.

16. St. Louis County is responsible for the payment of all lawful expenditures of the Circuit Court, including payment of all salaries, compensation and benefits of employment for all personnel (excluding the Judge and Commissioners) of the Juvenile Division of the Circuit Court.

17. Sections 50.640, 50.641 and 476.270, MO.REV.STAT., are the pertinent statutory references regarding the budget estimates and expenditures of the Circuit Court and their payment by St. Louis County.

18. The budget estimates of the Circuit Court include the Circuit Court Divisions One through Twenty, Probate Court, Juvenile Court (Children's Building, Juvenile Court Administration, Lakeside Center), Court en Banc, and Associate Circuit Court Divisions Thirty-One through Forty-Three.

19. The procedure followed by the Circuit Court and St. Louis County is that the budget estimate of the Circuit Court is submitted to the County Budget Officer. No later than 60 days prior to the beginning of each fiscal year (currently January 1) the County Executive submits to the County Council a budget for the overall operation of the County. Such budget includes an allocation for the Circuit Court. The budget is adopted by ordinance of the County Council.

20. During the course of a fiscal year, the County Executive may by executive order transfer appropriations within any department. During the course of a fiscal year, supplemental or emergency appropriations are made by the County Council by ordinance, if recommended by the County Executive. These procedures apply to the appropriations for the Circuit Court.

21. Unexpended appropriations are returned to the General Fund at the close of each fiscal year. For each of the fiscal years 1976 through 1981, there were unexpended appropriations of the adjusted appropriation sums provided for the Circuit Court. The unexpended appropriations returned to the General Fund from the Circuit Court for such fiscal years ranged from $462,000 in 1978 to $91,188 in 1980.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this controversy pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1343.

2. The Circuit Court is a "person" within the meaning of 42 U.S.C. § 2000e(a) and an "employer" within the meaning of 42 U.S.C. § 2000e(b).

3. Goodwin was at the relevant times herein an "employee" within the meaning of 42 U.S.C. § 2000e(f).

4. Goodwin must first establish a prima facie case to succeed on the merits of this Title VII cause of action. *Albemarle Paper Co. v. Moody,* 422 U.S. 405, 95 S.Ct. 2362 (1975); *McDonnell*

Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1973). Goodwin presented a prima facie case by showing that 1) she is a member of a protected class (female), 2) she was qualified for the job of hearing officer, 3) despite her qualifications she was transferred from the position of hearing officer, and 4) after Goodwin's transfer, the Circuit Court, through Judge Corrigan, awarded the sole remaining job of hearing officer to a male who has similar or less qualifications. *Meyer v. Missouri State Highway Commission,* 16 F.E.P. Cases 630 (8th Cir. (1977). However, some of the Circuit Court judges testified at trial that Craig Donis was an excellent candidate for the hearing officer position.

5. After Goodwin's prima facie case is established, the burden shifts to the Circuit Court to show a nondiscriminatory purpose for the selection of Donis over Goodwin or that Goodwin was not treated differently from the other persons available for the hearing officer position. *Meyer, supra,* at 633. There were three hearing officer positions. Two of them were initially eliminated. The record indicates that Sam Oliver, a former hearing officer, voluntarily relinquished his position. Thus, there were only two persons actually in the running for the remaining position—Goodwin and Donis. The Court finds that the Circuit Court, through Judge Corrigan, treated Goodwin's "application" for the position of hearing officer differently than Donis' because she is a woman, and has failed to rebut the inference that it discriminated against Goodwin on the basis of sex.

6. Having found that the Circuit Court is an employer within the meaning of 42 U.S.C. §2000e(b), and that the Circuit Court was exercising its inherent administrative power when it transferred Goodwin, the Court concludes that the Circuit Court is not shrouded with judicial immunity in this instance. 42 U.S.C. § 2000e-2(a).

7. The Court finds, however, that Goodwin suffered no economic loss and is not entitled to a monetary award. Good-

win's transfer did not affect her salary or her other economic benefits of employment. She also received the same coverage under her employee health insurance and pension plans. Goodwin also has the same vacation benefits and sick leave as when she was a hearing officer. Goodwin is not entitled to reinstatement because the Court finds that the position of hearing officer has been abolished and the circumstances of this case do not warrant the affirmative relief of ordering that position reopened. *Davis v. Passman,* 442 U.S. 228, 99 S.Ct. 2264 (1979).

8. The only award to which Goodwin is entitled is declaratory relief. The Court specifically finds that the Circuit Court, through Judge Corrigan, violated Title VII of the Civil Rights Act of 1964 by transferring her from the position of hearing officer to the position of staff attorney because of her sex. Injunctive relief is inappropriate because the Court is not disposed to order the Circuit Court to reinstate Goodwin to the hearing officer position. Since there is no evidence in the record of the Circuit Court's continued discriminatory practice against Goodwin, injunctive relief will be denied.

9. However, the Court does tax Goodwin's attorney's fees and costs of litigation against Judge Corrigan and the Circuit Court. 42 U.S.C. § 2000e-5(k); 42 U.S.C. § 1988.

10. On the third-party complaint, the Court finds that the County is inextricably involved in this litigation inasmuch as it is the funding source of the Circuit Court, *Marafino v. St. Louis County Circuit Court,* No. 78-1255C(3) (E.D.Mo. May 14, 1980), and that without entering judgment against it on the third-party complaint, the Court's broad powers to fashion a remedy to further the objectives of Title VII, 42 U.S.C. § 2000e-5(g), would be a nullity. Moreover, the County admits that it is responsible for the payment of all lawful expenditures of the Circuit Court. One would be hard pressed to deny that a court ruling that assesses a monetary award against the Circuit Court is not a lawful expenditure. Therefore, judgment is

entered for the Circuit Court on the third-party complaint that seeks indemnity from the County for any relief awarded to Goodwin against the Circuit Court in this lawsuit.

Dated this 30th day of December, 1982.

/s/ Clyde S. Cahill
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1161

Mary Susan Goodwin,
Appellee,

v.

The Circuit Court of St. Louis County, Missouri,
Appellant.

No. 83-1163

Mary Susan Goodwin,
Appellee,

v.

The Circuit Court of St. Louis County, Missouri,
Appellee,

v.

St. Louis County, Missouri,
Appellant.

On Appeal from the United States District Court
for the Eastern District of Missouri

Submitted: May 23, 1984
Filed: August 23, 1984

Before ROSS, ARNOLD, and BOWMAN, Circuit Judges.

ARNOLD, Circuit Judge.

These cases arise out of the claim of Mary Susan Goodwin, a lawyer, that she was removed from her position as a hearing officer for the Juvenile Division of the Circuit Court of St. Louis County, Missouri, because of her sex. Her claim was based on Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., and on 42 U.S.C. §1983. The §1983 claim was brought against a judge of the Juvenile Division, while the Title VII claim was brought against the Circuit Court itself. On March 6, 1984, we affirmed the judgment entered on a jury verdict against the judge. In the same opinion, the Title VII aspect of the case was remanded to the District Court for further findings. *Goodwin v. Circuit Court of St. Louis County, Missouri,* 729 F.2d 541 (8th Cir.), *petition for cert. filed sub nom. Corrigan v. Goodwin,* 52 U.S.L. Week 3908 (U.S. June 4, 1984) (No. 83-1978).

The District Court[1] has now made and certified to us new findings on the Title VII claim. The Court has found, this time placing the burden of persuasion throughout the case on the plaintiff, that plaintiff was in fact removed from the hearing officer position because of her sex. It is our duty now to review this finding and, if we approve it, to decide St. Louis County's appeal from the judgment entered over against it on the third-party claim of the Circuit Court.

Our prior opinion states the facts and gives our reasons for affirming the judgment entered on the jury verdict on the §1983 claim. The same factual question, whether or not plaintiff's treatment was based on her sex, is of course at the heart of the Title VII claim. No purpose would be served by repeating the facts. We hold that the District Court's finding is not clearly erroneous, and the judgment in favor of plaintiff and against the Circuit Court will therefore be affirmed.

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[1] The Hon. Clyde S. Cahill, United States District Judge for the Eastern District of Missouri.

The District Court's prior opinion, 555 F.Supp. 658 (E.D. Mo. 1983), held the county liable on the Circuit Court's third-party claim. The Circuit Court defends this judgment principally on the ground that judgment over against the county is necessary to give the plaintiff complete relief on her Title VII claim. The Circuit Court, it is said, has no funds of its own, and if the county, which normally funds the operations of the Circuit Court, does not stand behind it and pay the judgment, no one will. Thus, according to the Circuit Court, the remedial purposes of Title VII will be frustrated unless its judgment on the third-party complaint against the county is affirmed. The county, on the other hand, replies that in fact other funds are available to the Circuit Court, perhaps from the State of Missouri itself, and that, in any event, it did not employ Goodwin, does not control the personnel decisions of the Circuit Court, and cannot be held liable under Title VII for what some other person or entity may have done.

We find it unnecessary to pass on these opposing arguments. The Circuit Court and the county stipulated in the District Court that under Missouri law the county must pay all the "lawful" expenses of the Circuit Court, with some exceptions, for example, salaries of judges, not here relevant. The Circuit Court, for instance, looks to the county for payment of its hearing officers and other non-judge employees, and under state law the county must make these payments. See Mo. Ann. Stat. §§50.640, 50.641, 476.270. The last cited statute provides, in pertinent part, that "[a]ll expenditures accruing in the circuit courts . . . shall be paid out of the treasury of the county in which the court is held. . . ." The District Court held, citing these statutes, that state law requires the county to pay any judgment entered in this case against the Circuit Court.

The county makes two arguments in reply. In the first place, it contends that an expenditure to pay the judgment rendered against the Circuit Court is not a "lawful" expenditure, because it would never have come about without the Circuit Court's

having violated the law by discriminating against Goodwin on the basis of her sex. We think the District Court's opinion fully answers this argument:

> Moreover, the county admits that it is responsible for the payment of all lawful expenditures of the Circuit Court. One would be hard pressed to deny that a court ruling that assesses a monetary award against the Circuit Court is . . . a lawful expenditure.

555 F. Supp. at 663. The normal meaning of the word "lawful," we suppose, is "permitted by law." Here, the expenditure in question is not merely permitted, it is required by law, because the judgment entered by the District Court requires the Circuit Court to pay it.

The county also argues that Article X, Section 21, of the Missouri Constitution, as amended in 1980, known as the Hancock Amendment, protects it from the Circuit Court's third-party claim. This provision reads as follows:

> Section 21. *State support to local governments not to be reduced, additional activities and services not to be imposed without full state funding.*
>
> The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of an activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivisions for any increased costs.

We assume, as argued by the county, that the Circuit Court is a "state agency" within the meaning of this provision, since it does exercise a portion of the judicial power of the State of

Missouri. The county argues that the judgment entered against the Circuit Court amounts to an increase in the level of the activities and services performed by the Court, and that it, as a political subdivision, can therefore not be required to pay it against its will.

We disagree with this line of argument. Section 21 provides, for present purposes, only that a state agency may not *require* a county to fund an increase in the level of the agency's activities or services. Here, the state agency, the Circuit Court, is not requiring the county to do anything. If the Circuit Court had had its way, no judgment in favor of Goodwin would ever have been entered. It is the Act of Congress, as interpreted and enforced by the District Court, that is imposing a requirement on the county. Furthermore, the activity or service involved here, the operations of the Juvenile Division of the Circuit Court, was fully operational before the Hancock Amendment took effect. We do not believe that the payment of a judgment arising out of a personnel dispute in an existing operation of a state agency is "an increase in the level of any activity or service" within the meaning of Section 21 of Article X. If, for example, the Circuit Court had, for some reason, declined to pay Goodwin's salary, and if she had then recovered a judgment against the Court for the unpaid amount, and if that judgment had included costs and, under some applicable law, an award of attorneys' fees, we think it clear that no "increase in the level of any activity or service" would have occurred. Instead, the same activity or service would have continued, and the judgment entered against the Circuit Court would simply be an incident of that activity or service.

We note, in conclusion, that these questions all arise under the law of Missouri. We normally defer to the district courts on questions of the law of their own states, and this principle applies to state constitutions as well as to statutes. We see no reason to depart from this practice here.

The judgments in favor of Goodwin and against the Circuit Court under Title VII, and against the county and in favor of the Circuit Court on the third-party complaint based on state law, are affirmed. There remains pending before the Court Goodwin's motion for attorneys' fees, filed on April 2, 1984. We have held this motion in abeyance pending our decision on the findings made by the District Court on remand. The matter of attorneys' fees is now ripe for decision. Any party who wishes to oppose the motion should do so within 15 days of the filing of this opinion.

It is so ordered.

BOWMAN, Circuit Judge, concurring in part and dissenting in part.

I agree that if the Circuit Court is liable to plaintiff under Title VII, then St. Louis County is liable on the Circuit Court's third-party claim.

I do not agree, however, that the decision below holding the Circuit Court liable to plaintiff under Title VII should be affirmed. My views on the merits of plaintiff's claim of unlawful employment discrimination are set forth in my dissent from our Court's previous decision in this case. *See Goodwin v. Circuit Court of St. Louis, Missouri,* 729 F.2d 541, 550-52 (8th Cir.) (Bowman, J., dissenting), *petition for cert. filed sub nom. Corrigan v. Goodwin,* 52 U.S.L.W. 3908 (U.S. June 19, 1984) (No. 83-1978). Based upon those views, which need no further elaboration here, I respectfully dissent from our Court's present decision under Title VII.

A true copy.

Attest:

CLERK, U.S. Court of Appeals, Eighth Circuit.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1163-EM. September Term, 1984

MARY SUSAN GOODWIN,
Appellee,

vs.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI AND WILLIAM M. CORRIGAN,
Appellees,

vs.

ST. LOUIS COUNTY, MISSOURI,
Appellant.

Appeal from the United States District Court
for the Eastern District of Missouri

The petition for rehearing en banc filed by appellant St. Louis, County, Missouri in the above case has been considered by the Court and is hereby denied.

Petition for rehearing by the panel is also denied.

September 21, 1984

APPENDIX D

Section 50.640 R.S.Mo. 1978

"50.640. Estimate of circuit court or circuit clerk, changed, how—disagreement with county, resolved, how.

1. Except as in this section otherwise specified, all offices, departments, courts, institutions, commissions or other agencies spending moneys of the county shall perform the duties and observe the restrictions set forth in sections 50.540 to 50.630 relating to budget procedure and appropriations. The estimates of the circuit court, including all activities thereof and of the circuit clerk, shall be transmitted to the budget officer by the circuit clerk. The estimates of the circuit clerk shall bear the approval of the circuit court. The budget officer or the county court shall not change the estimates of the circuit court or of the circuit clerk without the consent of the circuit court or the circuit clerk, respectively, but shall appropriate in the appropriation order the amounts estimated as originally submitted or as changed, with their consent.

2. If the county governing body deems the estimates of the circuit court to be unreasonable, the governing body may file a petition for review with the judicial finance commission on a form provided by the commission after the estimates are included in the county budget. The form provided by the commission shall include an opportunity for the governing body and the circuit court to state their positions in a summary fashion. If a petition for review is filed, the circuit court shall have the burden of convincing the commission that the amount estimated by it and included in the budget is reasonable. In determining if the circuit court estimate is reasonable, the commission shall consider the expenditures necessary to support the circuit court in relation to the expenditures necessary for the administration of all other county functions, the actual or estimated operating deficit or surplus from prior years, all interest and debt redemption charges, all capital projects expen-

ditures, and the total estimated available revenues from all sources available for financing the proposed expenditures. In determining the reasonableness of any budget estimate involving compensation, the commission shall also consider compensation for county employees with similar duties, length of service and educational qualifications. The commission shall immediately order a settlement conference to determine if the matter can be resolved before ordering briefs and oral argument. The commission, to the maximum extent practicable, shall resolve the dispute prior to the beginning of the fiscal year in question. The county governing body may file and prosecute a petition for review without representation by counsel."

Section 50.641 R.S.Mo. 1978

"50.641. Estimates—contents.

1. The estimates of the circuit court referred to in section 50.640 which are to be included within the county budget by the budget officers and the county courts without change shall include those categories of expenditures to support the operations of the circuit court which are attributable to the business of the circuit judges, associate circuit judges and the staffs serving such judges.

2. Nothing contained in section 50.640 shall be construed as providing for the budgeting of county funds to fund the operation of municipal divisions of the circuit court."

Section 476.270 R.S.Mo. 1978

"476.270. Expenditures of court to be paid out of county treasury—exceptions.

All expenditures accruing in the circuit courts, except salaries and clerk hire which is payable by the state, except all expenditures accruing in the municipal divisions of the circuit court, and except as otherwise provided by law, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands."

Office-Supreme Court, U.S.
FILED
JAN 22 1985
ALEXANDER L. STEVAS,
CLERK

(8)

No. 84-1075

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ST. LOUIS COUNTY, MISSOURI,
Petitioner,

vs.

CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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TABLE OF CONTENTS

	Page
Statement of Case	1
Reasons Why The Writ Should Be Denied	2
1. The Nature of the Judgment	2
2. The District Court's Authority to Fashion a Remedy under Title VII	4
Conclusion	6

TABLE OF AUTHORITIES

Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975)	5
Haring v. Prosise, ____ U.S. ____, 76 L.Ed.2d 595, 103 S.Ct. ____ (1983)	2
In Re 1979 Budget of the Juvenile Court of St. Louis County, 590 S.W.2d 900 (Mo. banc 1979)	3
International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977)	5
42 U.S.C. §2000e-5(g)	4
42 U.S.C. §2000e-5(k)	4
§ 476.270 R.S.Mo. 1978	3
§ 105.711, Laws of Missouri 1983	4
§ 50.640, Laws of Missouri 1982	5
§ 477.600, Laws of Missouri 1982	5

No. 84-1075

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ST. LOUIS COUNTY, MISSOURI,
Petitioner,

VS.

CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

STATEMENT OF CASE

The Statement of the Case appearing at pp. 2-3 of the Petition for Writ of Certiorari is incomplete and confusing.[1] The background facts of the claims of the plaintiff against Judge Corrigan and the Circuit Court are set out in the Memorandum Opinion of the District Court, pp. A-2 to A-7 of the Appendix.

The basic facts relevant to the third-party petition by the Circuit Court against St. Louis County, as found by the District Court, are recited in Section B of the Memorandum Opinion of the District Court, pp. A-7 to A-8.

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[1] Petitioner has interchanged the two counts in its discussion on p. 3. Count I was the claim against the Circuit Court, based on its alleged violation of Title VII of the Civil Rights Act of 1964. Count II was against Judge Corrigan and was founded on 42 U.S.C. §1983.

REASONS WHY THE WRIT SHOULD BE DENIED

Respondent respectfully submits that the Court should deny this Petition for Certiorari. The ruling about which Petitioner complains derives solely from, and is determined by, Missouri law. Petitioner concedes that it is the sole funding source of the Circuit Court[2] and that it is obligated to pay all lawful expenses of the Court. That concession reflects well settled Missouri statutory and common law. It was on this basis that the District Court held, and the Court of Appeals affirmed, that judgment on the third-party claim by the Circuit Court against St. Louis County was essential in order to permit the fashioning of a meaningful remedy for the plaintiff.

This case is clearly appropriate for the application of the doctrine of this Court that "standing alone, a challenge to state-law determinations by the Court of Appeals will rarely constitute an appropriate subject of this Court's review. Supreme Court Rule 17." *Haring v. Prosise*, ____ U.S. ____, 76 L.Ed.2d 595, 604, n. 8, 103 S.Ct. ____ (1983).

Respondent herewith comments briefly on the contentions raised by Petitioner.

1. The Nature Of The Judgment.

To avoid the impact of the governing principles of Missouri law, Petitioner has attempted to recast this cause into the mold of a traditional case of indemnity. Thus, Petitioner complains that the Circuit Court, as 'wrongdoer' is being insulated from liability and asserts that "The Eighth Circuit, through its novel and erroneous interpretation of state law, transferred liability to the County thus indemnifying the Circuit Court." Petition, p. 4. Petitioner has totally misconceived the basis of the third-

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[2] The exceptions to this principle are not relevant herein.

party proceedings herein and is itself in error in its contention that the Eighth Circuit has misinterpreted state law. Respondent has not escaped liability and Petitioner is not being saddled with vicarious liability.

The essence of the rulings below is that the judgment against Petitioner was necessary to provide an adequate remedy to the plaintiff. The Circuit Court is entirely dependent on the Petitioner for funding. The Court has no funds for its operations other than those appropriated by Petitioner. Plainly and simply, the plaintiff could not enforce her judgment against the Circuit Court unless the County makes available the necessary funds.

The Circuit Court's dependence on Petitioner for funding is expressly called for by the provisions of §476.270, RSMo, which state:

> "All expenditures accruing in the circuit courts,. . .shall be paid out of the treasury of the county in which the court is held in the same manner as other demands."

The case law is in accord. As characterized in *In Re 1979 Budget of the Juvenile Court of St. Louis County,* 590 S.W.2d 900, 903 (Mo. banc 1979):

> "The Circuit Court does not have power to levy taxes in order to defray expenses necessary to perform its judicial functions. The taxing power is in the County....It is the County which must supply the funds."

Petitioner's suggestion that this case must be governed by federal law regarding indemnification is erroneous. The issue presented is which entity of state government is required to provide funds to satisfy a judgment against the Circuit Court. In our federal system, that determination is necessarily one of state law.

The authorities cited by Petitioner are irrelevant. In none of these cases did the Courts consider which entity of state govern-

ment should be responsible for satisfying a judgment rendered against another entity which has no taxing power.

Parenthetically, action by the Missouri legislature since the date of judgment herein may well have mooted the issue attempted to be raised by Petitioner. Section 105.711, Laws of Missouri 1983, creates a 'state legal expense fund' which provides funds for the payment, inter alia, of a money judgment rendered against any officer or agency of the State of Missouri by a court of competent jurisdiction. Under these circumstances, the time of this Court should not be devoted to a contention which may well have no precedential significance.

2. **The District Court's Authority To Fashion A Remedy Under Title VII.**

The language of Title VII provides broad authority to the District Court to remedy a violation. In such circumstances:

> "The court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate....*or any other equitable relief as the court deems appropriate.*"

42 U.S.C. §2000e-5(g) (emphasis added). 42 U.S.C. §2000e-5(k) includes an award of reasonable attorney's fees as part of the District Court's authority.

This Court has held that the District Court's authority under Title VII is entitled to a broad construction:

> "The terms 'complete justice' and 'necessary relief' have acquired a clear meaning in such circumstances. Where racial [or sexual] discrimination is concerned, the district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future...

> The 'make whole' purpose of Title VII is made evident by the legislative history. . . . 'The provisions of this subsection are intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible.' "

Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-21 (1975). *Accord, International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 364-65 (1977).

In entering judgment in favor of the Circuit Court on its third-party complaint, the District Court did no more than exercise that broad discretion.

Had Petitioner not been brought into the instant cause, the judgment in favor of Plaintiff would clearly have been, as described by the District Court, a nullity. The only other course which the Circuit Court could have followed would have been to include funds to satisfy the judgment in its next annual budget submitted to Petitioner. Petitioner assuredly would have contested same and would have sought review both by the Judicial Finance Commission of the State of Missouri and the Supreme Court of Missouri, as provided by Sections 50.640 and 477.600, RSMo.

The time delays consumed by such efforts would not have been justifiable. Moreover, neither the administrative agency nor the Missouri Supreme Court would have been subject to the statutory directive, embodied in Title VII, to render a meaningful decree which would fashion the most complete relief possible.

CONCLUSION

As the entity which constitutes the sole funding source for the payment of the Circuit Court's expenses, it is patently essential that Petitioner be held obligated to provide the funds to satisfy the judgment rendered in favor of plaintiff against the Circuit Court. This conclusion is dictated by State law. The entry of judgment against Petitioner was well within the discretion of the District Court. The issue attempted to be raised by Petitioner is wholly inappropriate for review by this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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